LEE ENG BENG & ANOR. v. TORAIRAJAH & ORS.

[S.C. (Salleh Abas L.P., Syed Agil Barakbah & Wan Hamzah S.C.JJ.) May 13 & July 1, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 305 of 1985]

Tort – Negligence – Damages – Fracture of right femur resulting in permanent shortening by 1 c.m. – Pain and suffering – Global award.

Damages – Leg – Right femur – Fracture – 1 c.m. shortening.

In this case the appellant appealed against the sum awarded in general damages for the second respondent. The second respondent had been injured in a road accident involving the car driven by her husband, the first respondent, and another motor car driven by the first appellant. Liability for the accident was admitted by the appellants. The second respondent suffered the most severe injuries and was hospitalised for total of 133 days and followed by physiotherapy treatment for about two months. She was found on admission to have the following injuries:

1. Abrasion forehead.
2. ½" laceration right forehead.
3. Abrasion right upper eyebrow region.
4. Abrasion right cheek.
5. Bleeding right nostril.
6. Abrasion chin.
7. 3" laceration right knee.
8. 3" irregular laceration left knee.
9. Fracture of right femur which on X-ray showed comminuted fracture lower third right femur.

The learned trial Judge made a global award of $35,000 for all her injuries, deducted 10% overlapping and awarded $31,500.

Held: it was clear that the global award was made not purely on the 1 c.m. shortening of the second respondent's right leg but covered all the other injuries, pain and suffering, the long period of treatment that she had undergone and loss of amenities. Even though the award might be slightly generous, it was not manifestly excessive.

SUPREME COURT.

Amar Chand Vohrah for the appellants.

N. Jegatheesan (*E. Ramasamy* with him) for the respondents.

Cur. Adv. Vult.

Syed Agil Barakbah S.C.J. (delivering the judgment of the Court): We dismissed this appeal with costs and confirmed the judgment of the learned High Court Judge sitting in Kuala Lumpur. We held that the sum of $31,500 awarded to the second respondent under the head of general damages was not excessive as to warrant interference by us. We now give our reasons for doing so.

The second respondent (second plaintiff in the Court below) was travelling with her son (third plaintiff) in the car driven by her husband (first plaintiff) which met with an accident near the second milestone Yong Peng/Muar road with another motor car driven by the first appellant and coming from the opposite direction. As a result of the collision, all the three plaintiffs were injured and had to be hospitalised for medical treatment. Subsequently all the three filed a writ claiming for damages against the two appellants on the ground of negligent driving of the first appellant who at the material time was the agent or servant of the second appellant, the registered owner of the other car. When the case came up before Shankar J. on October 28, 1984 both the appellants admitted full liability for the accident and that was confirmed before Shaik Daud J. on April 29, 1985. The learned Judge heard the case only on the quantum of damages. The appeal was only against the sum awarded in general damages in favour of the second respondent.

According to the undisputed evidence accepted by the learned Judge, the second respondent suffered the most severe injuries and was hospitalised for a total of 133 days and followed by physiotherapy treatment for about two months. On admission in the District Hospital Batu Pahat, she was found to have the following injuries:-

1. Abrasion of forehead.
2. ½" laceration of right forehead.
3. Abrasion of right upper eyebrow region.
4. Abrasion of right cheek.
5. Bleeding of right nostril.
6. Abrasion of chin.
7. 3" laceration of right knee.
8. 3" irregular laceration of left knee.
9. Fracture of right femur which on X-ray showed comminuted fracture of lower third right femur.

She was first admitted in Batu Pahat Hospital and received treatment there for about 45 days during which time her right leg was in plaster-of-paris from waist down to the toes. She was unable to walk and was all the time in bed. After her dis-

charge on December 13, 1978 she was further admitted to General Hospital Melaka for treatment for about 80 days. After her discharge, she had to attend as an out-patient. She had to move about on crutches for about one year. She was later examined by the Consultant Orthopaedic Surgeon, General Hospital Melaka on July 1, 1982 who found that the fracture of the right femur had united and resulted in permanent shortening by 1 c.m. She walked with a limp. Her right knee movements were restricted to 40°. That was due to being primarily related to the nature of her injury. Her chief complaints were pain in the right knee joint and at the femural fracture site at times. Due to the restriction of movements of the right knee, she was unable to squat, to negotiate stairs and uneven surfaces and found difficulty in doing her daily prayers.

The learned Judge in his grounds of judgment considered the awards in several authorities as guidelines and having regard to facts and circumstances of the case made a global award of $35,000 for all her injuries, deducted 10% for overlapping and awarded $31,500. It is clear that the global award was made not purely on the 1 c.m. shortening of the second respondent's right leg but covered all the other injuries, pain and suffering, the long period of treatment that she had undergone and loss of amenities. Even though the award might be slightly generous, we did not consider it to be manifestly excessive. For these reasons, we dismissed the appeal.

Appeal dismissed.

Solicitors: *Vohrah & Tan Chee Lan; E. Ramasamy & Co.*

LEE YOKE CHYE v. TOH THEAM BOCK & CO.

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah S.C. JJ.) February 3 & August 9, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 120 of 1984]

Land Law – Issue document of title held by solicitors for registered owner – Alleged sale of portions of the land by agent of owner – Solicitors claiming to hold title-deeds as stakeholders – Solicitors agent of registered owner – National Land Code, ss. 5, 281(1) & 330(1).

In this case the appellant had retained the respondent, a firm of solicitors, to act for her in the purchase of land in Perak and the transaction had been completed. The issue document of title was delivered and received by the respondent. Subsequently the appellant agreed to sell the land to a purchaser and retained another firm as her solicitors. Her new solicitors applied for the issue document of title to be returned but the respondent refused to comply with this demand. The respondent in its defence stated that the appellant had executed a power of attorney in favour of her son and that the son as her attorney had entered into agreements for the sale of portions of the land. The appellant took out an originating summons for the return of the documents of title. The respondent thereupon applied for an interpleader summons to be served on the alleged purchasers. The claimants relied on the clause of the agreements that "until such time when a proper representation is agreed to by all the other co-owners of the other portions of the said land, the relevant title of the land shall be kept in the safe custody of the respondent who shall be the stakeholders thereof." The learned trial judge dismissed the application of the appellants and the appellants appealed.

Held: (1) an issue document of title particularly one relating to a large piece of land which has yet to be subdivided into individual housing lots, cannot be deposited and held "as stakeholders". As the respondent was not holding the issue document of title as stakeholder, it was not competent for him to take out a stakeholder interpleader summons;

(2) on the facts of the case the respondent was holding the issue document of title merely as agent for the appellant and as the agency and authority of the respondent has been terminated, the claimants (the alleged purchasers) were unable to prevent the respondent from complying with the demand of the appellant for the return of the issue document of title.

Cases referred to:

(1) *Maloney* v. *Hardy* (1970) 216 E.G. 1582, 1585.
(2) *Sorrell* v. *Finch* [1977] A.C. 728, 745.

SUPREME COURT.

V. Muthusamy for the appellant.

V.S. Visvanathan for the respondent.

Cur. Adv. Vult.

Seah S.C.J. (delivering the Judgment of the Court): This appeal raises a short but interesting point of law. According to the appellant:

(a) In or about 1981 she retained the respondent to act for her in the purchase of a parcel of land situate in the Mukim of Bagan Tiang, Kerian, Perak, known as Lot No. 1811 comprised in State Lease No. 1327 containing an area of 15 acres 2 roods 30 poles or thereabout (hereinafter referred to as the said land). The transaction was successfully concluded by the registration of a memorandum of transfer of the said land at the Ipoh Land Office on